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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, Petitioners,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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PETITION FOR A WRIT OF CERTIORARI TO THE
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OPINIONS BELOW

The original opinion of the Supreme Court of Alaska is reported at 395 P. 2d 372. The opinion of the Supreme Court of Alaska on remand from this Court is printed in 421 P. 2d 586. The opinion denying rehearing has not been reported. The Superior Court of Alaska filed no opinion.

JURISDICTION

The judgment of the Supreme Court of Alaska was entered on December 7, 1966, and a timely petition for rehearing was denied February 2, 1967. On May 8, 1967, Mr. Justice Douglas filed an order extending the time for filing this petition to July 3, 1967.

QUESTIONS PRESENTED*

1. May public school teachers be discharged for the exercise of their First Amendment rights of association and criticism of public officials?

2. Is AS 14.20.170 authorizing the discharge of school teachers for "immorality", which was construed by the Alaska Supreme Court to be a "catch-all" extending to "social misbehavior" and which was applied to the exercise of First Amendment rights, unconstitutionally vague and overbroad?

CONSTITUTION, STATUTE AND REGULATIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution, AS 14.20.170 prior to amendment by S.L.A.1966 chapter 104, and Seward School Board Regulations E(7) and E(9). They are reprinted in the appendix.

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* If certiorari is granted, petitioners will also argue the following question: Did the Supreme Court of Alaska deny petitioners their rights under the First and Fourteenth Amendments by relying on School Board Regulation E(7) to sustain their discharge?

STATEMENT OF THE CASE

Petitioners Watts and Blue come to this Court for a second time. At the 1964 Term, they sought review of a judgment of the Supreme Court of Alaska sustaining their dismissal as public school teachers in Seward, Alaska, urging that that dismissal violated the First and Fourteenth Amendments. On May 3, 1965 this Court granted certiorari, and vacated the decision below for reconsideration in light of changes in the Alaska statutes which had been enacted while the Petition was pending. Watts v. Seward School Board, 381 U.S. 126. Further briefs were filed by the parties on remand, and oral argument was held in October, 1965. On December 7, 1966, the Supreme Court of Alaska issued its decision on remand, reaffirming, by a 2-1 vote, its original judgment sustaining petitioners' dismissal. The Court below found the changes in Alaska law to be inapplicable to petitioners, a determination which is nonreviewable here. But the Court did not stop there. It substantially altered the grounds on which it was sustaining petitioners' "nonretention" -- that is, their dismissal -- as school teachers. These changes, and the issues presented by the present Petition, can best be understood by placing them in the setting of the prior proceedings as described by this Court's opinion of May 3, 1965:

> Petitioners Watts and Blue were dismissed from their positions as schoolteachers in Seward, Alaska, on grounds of "immorality", which under Alaska Statutes 1962, §14.20.170 was defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." Petitioners' dismissals were upheld by the Alaska

Superior Court (Third Judicial District), and on appeal the Alaska Supreme Court affirmed the Superior Court's decision. 395 P.2d 372. The Alaska Supreme Court noted that "[t]he immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, 'We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board,' or words to that effect." 395 P.2d, at 374. The Alaska Supreme Court held that this conduct "had a tendency to bring the [petitioners]...and the teaching profession into public disgrace or disrespect," within the terms of the statute, 395 P.2d, at 375, and it therefore sustained their dismissals. 381 U.S. at 126-127.

Thus, as the case returned to the Alaska Supreme Court, petitioners had each been found guilty of "immorality" under Alaska law: Watts for soliciting support in the ouster of the school superintendent, and Blue for his speech to a labor union.

In its second opinion, the Court discussed at some length the meaning of the term "immorality" as defined in S.L.A. 1957, c. 71, §2 (codified as AS 14.20.170), as a ground for "nonretention" of school teachers:

> The use of the term by the legislature must be considered in context. When the facts of this case arose in 1959, SLA 1957, chapter 71, section 2 listed and defined the three causes for which a teacher could be nonretained as:
>
> (a) Incompetency - defined as the inability or failure to satisfactorily perform one's duties,
> (b) Immorality - defined as 'conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect', and
> (c) Substantial noncompliance with the school laws of the Territory or regulations of the Territorial Board of Education.
>
> Of the three causes for nonretention, "incompetency" and "substantial noncompliance" are reasonably specific. "Immorality", on the other hand, is broad and covers any and all conduct of the teacher which tends to bring

> disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior. The point in a teacher's conduct beyond which his behavior would tend to bring disgrace or disrespect upon him or his profession, would be one of degree depending upon the rules of society and to some extent upon the mores of the particular community.
>
> Since it does cover such a broad range of conduct, it seems quite likely that the Alaska Legislature originally intended that "immorality" be a "catch-all" cause for nonretention, intended to serve the same purpose as that mentioned in Beilan v. Board of Education... [357 U.S. 399 at 406]. Opinion pp. 7-8, hereafter cited as "Op.", footnotes omitted.1/

This construction of "immorality" as a "catch-all" was subsequently reiterated. (Op. pp. 8,9,40) Applying this interpretation, the Court reaffirmed its prior conclusion that Watts' conversations regarding the Superintendent and Blue's speech constituted "immorality" under the statute. (Op. pp. 27-28) And the Court held that the application of the statute to discharge Watts for this conduct was consistent with the First and Fourteenth Amendments. But it held with respect to Blue's speech that "the constitutional question becomes a close one", which it resolved in Blue's favor. (Op. pp. 49-50) Blue's nonretention for the speech was therefore reversed. But the Court additionally considered two additional grounds, arising out of a single activity which had been relied on by the School Board, and sustained the discharge of both on those grounds. The charge was that Petitioners had participated in the printing and distribution of an Open Letter to the Seward School Board, which was signed by the Seward Local of the American Federation of Teachers. The letter is reproduced at pp. 13-16 of the Court's opinion. Its purpose was stated as follows:

1/ Petitioners challenge the constitutionality of the immorality statute in their brief below on remand, and again, in the light of the construction in the Supreme Court of Alaska's second opinion, in their petition for rehearing.

> The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occurring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system. (Op. pp. 13)

The letter described these "incidents" and the Local's efforts to obtain changes, which included organizing a meeting at which only one member of the School Board appeared. The letter concluded with a request for a special open School Board meeting and a statement of the improvements in administrative policies for which the Local would press at that meeting. The Court below determined that this conduct constituted "immorality" under its interpretation of the statute, and that it also constituted "substantial noncompliance" with the School Board's Regulation E(7) and was therefore an independent cause for "nonretention" under subsection (c) of §14.20.170. In its findings supporting the conclusion that the conduct was "immoral" the School Board had said that some of the statements in the letter were false, and that they tended to bring the teaching profession and petitioners individually "into public disgrace or disrespect". There was no finding that petitioners made these statements knowing that they were false or in reckless disregard of their truth. The finding of a violation of Regulation E(7) was based on the fact that the Open Letter was circulated to the public without previously presenting the matter as a grievance to the Superintendent, although the Regulation was found to provide that "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent".[2/]

2/ There was controversy below whether Regulation E(7) had ever been adopted, since the minutes of the School Board did not so show, and whether, in light of regulation E(9) it was applicable to the circulation of the Open Letter. See pp. 13-16 of Mr. Justice Rabinowitz' dissenting opinion below. Furthermore, the Regulation seems to set forth procedures, rather than a standard of conduct, by describing how a "grievance" (which is an undefined term) is to be processed.

In discussing the petitioners' First Amendment contentions, the Court acknowledged that they had a constitutional right to engage in the conduct which resulted in their discharge. But the Court said, with respect to the Open Letter, that they "exceeded the limits of the exercise of their right of freedom of speech to the extent that they were not entitled to require the Seward School Board to renew their teaching contracts under the tenure law". (Op. pp. 47-49) With respect to Watts' solitation of the teachers, the Court said:

> Appellant Watts had a constitutional right to freedom of discussion with other teachers, but he did not have a constitutional right to have his teaching contract renewed after soliciting teachers on school premises, during school hours, to support a private move to oust the Superintendent, where the effect of these acts was to bring down public disgrace and disrespect on him and his profession and to undermine the morale and discipline of the local school system.3/ (Op. p. 49)

As noted earlier, the Court also concluded that Blue could not constitutionally be discharged for his speech to the Longshoremen's Union.

Mr. Justice Rabinowitz filed an opinion concurring in the reversal of the charge based on Blue's speech, but dissenting from the remainder of the Court's judgment and opinion. While respectfully inviting attention to his entire opinion because of the light it sheds on that of the majority, and particularly on his discussion

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3/ There does not appear to be any evidence to support the conclusion that these interviews were "during school hours", or that they had the stated effect. Since the basis for the characterization of Watts' "move" as "private" is not immediately apparent, we note that the Court earlier said that it was "private" in the sense that it was not supported by "a majority of the newly formed Alaska Federation of Teachers". (Op. p. 29)

of the free speech issues, we shall confine our quotation to his conclusion:

> One of the most important functions of this court is to assure that constitutional rights are vindicated. By today's decision the right to free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses "uninhibited", "robust", and "wide-open" debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system. (Op. p. 35)

REASONS FOR GRANTING THE WRIT

A. The Judgment Below, Contrary to the Settled Course of Decision in this Court, Deprives Petitioners of Fundamental Constitutional Rights.

1. Public School Teachers May Not be Discharged for the Exercise of their First Amendment Rights.

As this case returns here, the discharge of both petitioners has been sustained on the ground that they participated in the circulation of an open letter regarding matters of public interest affecting the school system of Seward, Alaska, and criticizing the school board and the school superintendent. Petitioner Watts' discharge has been sustained on the additional ground that he solicited other teachers in an effort to oust the school superintendent. Both activities are protected by the First and Fourteenth Amendments of the United States Constitution. The Open Letter discussed a matter of obvious public importance, the condition of the public school system. "The central commitment of the First Amendment as summarized in the opinion of the Court in New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964), is that 'debate on public issues should be uninhibited, robust, and wide-open.'" Bond v. Floyd, 385 U.S. 116, 137. It is self-evident that the administration of the public schools is a matter of vital and abiding public interest.4/

Petitioner Watts' attempts to solicit three teachers to join in a move to oust the school superintendent is likewise protected by the First Amendment. The move was political in nature, being directed to the ouster of a public official, thus coming within the New York Times principle. Moreover, the solicitation of others to join a group with a lawful objective is encompassed

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4/ Of course, First Amendment protection of such discussion is not lost because it involves criticism of public officials. New York Times, supra; Garrison v. Louisiana, 379 U.S. 65; Rosenblatt v. Baer, 383 U.S. 75. It is said in the opinion of the Court below that petitioners' criticism was "false". While we disagree with this statement, it is without constitutional significance since the Court made no finding, and there is no evidence that petitioners knew the statements to be false or acted in reckless disregard of their truth. New York Times, supra, 376 U.S. at 279-280.

by the freedom of association which is guaranteed by the First Amendment. Thomas v. Collins, 323 U.S. 516.[5] If invitations to associate were unprotected the constitutional right could be cut off at the threshold.[6]

These constitutional premises were accepted by the Court below, but it nonetheless sustained the discharges on the theory that petitioners did not have a constitutional right to have their contracts renewed. But as the Supreme Court of California recently said in sustaining the right of public employees to engage in political activity, "Despite the antiquity of this argument, its reasoning today stands utterly discredited." Bagley v. Washington Township Hospital District, 55 Cal. Rptr. 401, 405, 421 P. 2d 409, 413. In Keyishian v. Board of Regents, 385 U.S. 589, this Court approved the Second Circuit's observation that "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." 385 U.S. at 605-606. The Keyishian opinion cited numerous deicisions rejecting the theory on which the Court below proceeded in this case. 385 U.S. at 606. Cf. Garrity v. New Jersey, 385 U.S. 493.

5/ Elfbrandt v. Russell, 384 U.S. 11; NAACP v. Alabama, 377 U.S. 288; Gibson v. Florida Legislative Committee, 372 U.S. 539; NAACP v. Button, 371 U.S. 415; Louisiana v. NAACP, 366 U.S. 293; Shelton v. Tucker, 364 U.S. 479; Bates v. Little Rock, 361 U.S. 516; NAACP v. Alabama, 357 U.S. 449; Thomas v. Collins, 323 U.S. 516; DeJonge v. Oregon, 299 U.S. 353.

6/ As we have noted, p.7, n. 3, supra, the Court below characterized petitioners' move to oust the superintendent as "private" because it lacked the support of the majority of the Alaska Teachers Federation. Even if accurate, this observation is devoid of constitutional relevance. The majority principle, which federal labor laws have adopted as a condition for granting unions exclusive bargaining rights cannot limit or qualify individual or group rights to engage in political activity.

The scope of the limitations, if any, which may reasonably be imposed on a public employee's constitutional rights is a complex and delicate issue, more appropriately discussed in a brief on the merits than in a Petition for Certiorari. It suffices here to point out that the interests asserted below to justify the invasion of petitioners' constitutional rights are inadequate under any standard of reasonableness. To the extent that the Court relied on the tendency of the statements to bring the criticized superintendent and School Board into public disgrace or disrespect, its view is irreconcilable with this Court's decisions, which make clear that concern for the reputation of public officials may not be exalted above "the paramount public interest in a free flow of information to the people concerning public officials, their servants." Garrison v. Louisiana, 379 U.S. 65, 77. It is inherent, not only in the profound constitutional commitment to free debate on public issues, but also in the underlying democratic principle that government officials are ultimately accountable to the public, that these officials cannot constitutionally shield themselves from criticism by imposing vows of silence on their subordinates. Finally, any limitation on the constitutional rights of employees to be constitutionally supportable must be drawn in the narrowest possible terms to meet the precise, compelling public interest which it designed to accomplish. Neither the "immorality" statute, which was construed below to be a "catch-all," nor the Regulation, if it does more than describe the method of processing grievances, can qualify under this standard. Indeed, as we show below, so indiscriminate and sweeping is their reach that they are themselves unconstitutional.

2. The Statute on which Petitioners' Discharge was Based is Unconstitutionally Vague and Overbroad.

The foregoing considerations are, in our view, dispositive of this case. But additional important constitutional considerations are raised by the construction of the immorality clause of AS 14.20.170 and its application to effectuate petitioner's discharge.

As we have seen, the Court below held that the phrase "immorality" in the list of causes for which a teacher may be "non-retained" was expressly designed as a "catch-all". This Court once said, in another context, "A catch-all the phrase surely is, but this is not to define what it catches." Flora v. United States, 362 U.S. 145, 149. But the Court below has construed "immorality" to catch "all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." (Op. p. 8). That construction of the statute is authoritative and binding here, even if a narrower interpretation would have protected it from constitutional challenge. Wieman v. Updegraff, 344 U.S. 183, 190; Kingsley Pictures Corp. v. Regents, 360 U.S. 684, 688; Cramp v. Board of Public Instruction, 368 U.S. 278, 285; NAACP v. Button, 371 U.S. 415, 431-432. And under that construction the statute is hopelessly vague and uncertain and denies the affected teachers due process of law. This would be true even if the statute did not touch upon First Amendment rights. "Social misbehavior" is plainly a concept so inherently vague "that men of common intelligence must necessarily guess at its meaning and differ as to its application". Connally v. General Construction Co., 269 U.S. 385, 391. But we need not pause on this point, for the statute must be assessed by the "stricter standards of permissible standards of statutory vagueness" applicable to a statute having a potentially inhibiting effect on speech.

Smith v. California, 361 U.S. 147, 151. For it is clear from this case that, as construed by the Court below it touches upon "the area of free expression." NAACP v. Button, 371 U.S. 415, 432. What was recently said in Keyishian v. Board of Regents, 385 U.S. 589, 603-604 is therefore directly in point and controlling:

> We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms," N.A.A.C.P. v. Button, 371 U.S. 415, 438; "[f]or standards of permissible statutory vagueness are strict in the area of free expression.... Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." Id., at 432-433. New York's complicated and intricate scheme plainly violates that standard. When one must guess what conduct or utterance may lose him his position, one necessarily will "steer far wider of the unlawful zone. . . ." Speiser v. Randall, 357 U.S. 513, 526. For "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions." N.A.A.C.P. v. Button, supra, at 433. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed.

A statute may be held to be unconstitutionally vague, because of its potential impact on First Amendment freedoms, even without a demonstration that it has ever been applied against constitutionally protected conduct. But the Court below held that the "immorality" clause extends to Blue's speech which the Court acknowledged was constitutionally protected. The statute thus comes under the First Amendment's bar against "overbreadth." The principle is firmly established that even a legitimate and substantial legislative purpose" cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U.S. 479, 488.7/

7/ See also, e.g. Lovell v. Griffin, 303 U.S. 444; Cantwell v. Connecticut, 310 U.S. 296; Elfbrandt v. Russell, 384 U.S. 11; Keyishian v. Board of Regents, 385 U.S. 589.

This principle has remained unquestioned despite disagreements within the Court as to whether the particular statute under consideration should be deemed overbroad. But there can be no doubt about a statute which has been authoritatively construed to extend its prohibitions to First Amendment rights.[8/]

8/ Seward School Board Regulation E(7) also suffers from the constitutional defect of overbreadth, having been construed to prohibit circulation of the Open Letter. As interpreted below, the Regulation is a striking example of how a perfectly reasonable purpose -- an orderly procedure for processing teacher grievances -- can be expanded to destroy constitutional rights, ironically those of the very teachers whom the grievance procedure is designed to protect. Indeed, so grotesque is the transformation of its innocuous language, that the Regulation presents a substantial due process issue on grounds of vagueness. Cf. Bouie v. City of Columbia, 378 U.S. 347, 354.

We have preserved our constitutional objections to Regulation E(7) as construed and to the procedures followed by the Court below in sustaining petitioners' discharge on the basis of that Regulation. P. 2, note, supra. But we do not wish to imply thereby that the Regulation could support the judgment below even in the absence of these constitutional infirmities. The threshold issue, as we see it, is whether disobedience to the Regulation is an adequate state ground for discharging petitioners for exercising their constitutional right to distribute the Open Letter to the public.

B. The Issues in This Case are of Recurring and National Importance.

When this case was first here, we urged that its implications far transcended the fates of these two petitioners or even of all teachers in the State of Alaska. Subsequent developments have confirmed this expectation. The issue of the rights of public employees to engage in political activity has now been before the highest courts of three of our most populous states. The Supreme Court of Illinois by a 5 to 2 vote[9] and the Court of Appeals of New York by a 4 to 3 vote[10] have, in agreement with the Court below, sustained the discharge of public employees for their exercise of these rights. However, the Supreme Court of California has decided to the contrary in a series of decisions.[11] As stated by that Court, the controlling principles are:

> The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such

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9/ Pickering v. Board of Education, 36 Ill. 2d 568, 225 N.W. 2d 1.

10/ Puentes v. Board of Education, 18 N.Y. 2d 906, 276 N.Y. Supp. 2d 638, 223 N.E. 2d 45. The majority and minority of the Court of Appeals wrote no opinions, their decision affirmed an unreported 3 to 2 decision of the Supreme Court, Appellate Div., First Dept.

11/ Fort v. Civil Service Commission, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P. 2d 385; Bagley v. Washington Township Hospital District, 55 Cal. Rptr. 401, 421 P. 2d 409 and Rosenfield v. Malcolm, 55 Cal. Rptr. 505, 421 P. 2d 697.

protections are not subject to destruction by a public employer's insistence that they be waived by contract.[12]

These state court decisions not only reflect opposed constitutional philosophies but also evidence sharp disagreements as to the meaning of this Court's precedents. Taken together, they demonstrate a pressing and immediate need for reaffirmation by this Court of the right of public employees and, particularly, teachers, to exercise their First Amendment rights, free of the fear of discharge, even if that exercise should meet with the disfavor of their employers. The present case, like Pickering and Puentes, is of particular significance because the public employees involved are school teachers. As this Court recently reaffirmed:

> Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. Keyishian v. Board of Regents, 385 U.S. 589 at 603.

That freedom would be sorely crippled if teachers were forbidden from commenting on and criticizing the operation of the school system itself. As Mr. Justice Schaefer said, dissenting in the Pickering case:

> Teachers are not necessarily the best critics in matters of school finance and administration, but they are in closer contact with the actual operation of the schools than anyone else, and the public should not be deprived of their views.[13]

See also the dissenting opinion of Justice Rabinowitz in the Court below at pp. 32-33.

12/ Bagley v. Washington Township Hospital District, supra, 55 Cal. Rptr. at 407, 421 P. 2d at 415.

13/ Pickering v. Board of Education, supra, 36 Ill. 2d at 584, 225 N.E. 2d at 10.

The issues raised by the use of broad and vague statutes and regulations to effectuate the discharge of public employees, while perhaps not of equal importance, are closely related. Moreover, the Court below pointed to the statutes of many of the states which, like Alaska, consider "immorality" to be a proper ground for the dismissal of teachers. Even though the Alaska Court's construction of this language was unusually broad and obviously unconstitutional, a ruling to that effect would be a useful guide to courts in other jurisdictions. Moreover, such a decision here would have the salutary effect of depriving similar language in such statutes of its in terrorem effect on teachers in other states.

CONCLUSION

The Supreme Court of California has aptly defined the compelling public interests which are affected by the issues raised in this case and which strongly justify the grant of certiorari:

> In summary we note that the expansion of government enterprise with its ever-increasing number of employees marks this area of the law a crucial one. As the number of persons employed by government and governmentally-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require imperil the continued operation of our institutions of representative government. Bagley v. Washington Township Hospital District, 55 Cal. Rptr. at 409, 421 P. 2d at 417.

Respectfully submitted,

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APPENDIX A

CONSTITUTION, STATUTE AND REGULATIONS INVOLVED

United States Constitution:

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute:

AS 14.20.170, prior to amendment by S.L.A.1966 chapter 104:

> Definition of cause [for non-retention of teachers]. The term "cause" as used in section I above (37-5-11 herein) shall be based solely upon: (a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial non-compliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmental agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the non-retention of a teacher.

Regulations:

Seward School Board Regulation E(7):

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board.

Seward School Board Regulation E(9):

Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members.

APPENDIX B

JUDGMENT

THE SUPREME COURT OF THE STATE OF ALASKA

JAMES A. WATTS and WALTER B. BLUE, Appellants, v. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Appellees.	File No. 427

This matter was considered by the court on remand from the Supreme Court of the United States for reconsideration in the light of Alaska statutes enacted subsequent to this Court's original decision.

It is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial non-compliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent, is affirmed as a cause for their nonretention.

Supreme Court of Alaska

Filed and entered
December 7, 1966
J. M. McPhetree, Clerk

MANDATE

THE SUPREME COURT OF THE STATE OF ALASKA

JAMES A. WATTS and WALTER B. BLUE,

Appellants,

v.

SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE,

Appellees.

File No. 427

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court of the State of Alaska (Third Judicial District) in Civil Action No. 61-728 entitled James A. Watts and Walter B. Blue, Petitioners v. Seward School Board and Board of Education, Appeal Hearing Committee, Respondents. The case was heard by this court of April 20, 1964. On September 21, 1964 this court entered its written opinion and entered judgment affirming the judgment of the superior court. Appellants filed a petition for a writ of certiorari in the Supreme Court of the United States. The petition was granted on May 3, 1965 and the September 21, 1964 judgment was vacated and the case remanded to this court. On December 7, 1966 this court entered its written opinion and entered judgment affirming in part and setting aside in part certain conclusions of the Seward School Board. Appellants' petition for rehearing was denied on February 2, 1967.

It is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7), is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

5. Appellees shall recover from appellants costs and attorney's fees as shown below:

Costs and Attorney's Fees

Duplicating appellees' brief.....$70.00
Attorney's fees.....$300.00

WITNESS the Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 10th day of February, 1967.